

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

July 15, 2015

City Council Chambers

MEMBERS PRESENT: Leanne Cardoso, Bill Burton, Linda Herbst, Jim Shaffer and George Papandreas

MEMBERS ABSENT: None.

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Cardoso called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:

A. Minutes for the May 7, 2015 special hearing: Burton moved to approve as presented; seconded by Shaffer. Motion carried unanimously with Herbst abstaining due to her absence.

B. Minutes for the June 17, 2015 hearing: Papandreas moved to approve as presented; seconded by Burton. Motion carried unanimously.

III. UNFINISHED BUSINESS:

A. V15-27 / Lytle / 1164 Hampton Avenue: Request by Ron and Jennifer Lytle for variance relief from Article 1335.04 to exceed maximum front setback encroachment; Tax Map 22, Parcel 14 and 15; R-1A, Single-Family Residential District. TABLED at June 17, 2015 hearing.

Papandreas moved to remove Case No. V15-27 from the table; seconded by Shaffer. Motion carried unanimously.

Fletcher presented the Staff Report.

Cardoso recognized Ron Lytle of 103 Bierer Lane, who stated the City's street has encroached onto his property and therefore the proposed houses need to set back farther than the allowable maximum front setback. The street is a heavily traveled road and pushing the houses back would permit a turnaround on the properties and eliminate cars having to back out onto the busy street.

Burton asked if a survey had been completed on the property. Lytle confirmed and stated the variance request is to allow the houses to be set back 35 feet from the road and not the property line.

Fletcher stated that variance relief could be granted for 35 feet from edge of the pavement since a true distance from the property boundary has not been determined.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the petition.

There being no comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-27 as revised; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Exceeding the maximum front setback standard for Parcels 14 and 15 of Tax Map 22 should serve to improve public safety by mitigating back-out movements from the sites onto Hampton Avenue, which is narrow, has poor site lines, and is heavily traveled as a cut-through route connecting the Mileground and Sabraton areas.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The subject development sites are located along a narrow and heavily traveled roadway used as a cut-through route connecting the Mileground and Sabraton areas, the conditions of which are existing.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The increase in front yard depth will permit turnarounds to be constructed between the houses and the front property boundaries at both development sites thereby mitigating back-out movements onto Hampton Avenue.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Exceeding the maximum front setback standard, with the condition that side and rear yard setback standards must be observed, will ensure that minimum building envelope requirements are maintained while permitting the construction of two (2) new single-family homes with public safety and access management in mind.

Papandreas moved to grant variance relief for Case No. V15-27 from the maximum front setback standard for Parcels of 14 and 15 of Tax Map 22 as requested so that the two (2) single-family dwelling can be constructed not more than thirty-five (35) feet from the edge of the existing pavement of Hampton Avenue with the condition that side and rear setback standards must be observe for both single-family dwelling development sites; seconded by Herbst. The motion carried unanimously.

Cardoso reminded Mr. Lytle that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

IV. NEW BUSINESS:

- A. **V15-36 / Park & Madison Boutique / 407 High Street:** Request by Shannon Coombs, on behalf of Park & Madison Boutique, for variance relief from Article 1369 as it relates to signage at 407 High Street; Tax Map 26, Parcel 85; B-4, General Business District.

Cardoso stated that Case No. V15-36 is postponed to the August 2015 Board of Zoning Appeals Hearing at the request of the applicant.

- B. **V15-44 / Lotsa Mozza / 419 High Street:** Request by Rudy Hoffert of City Neon, Inc., on behalf of Lotsa Mozza, for variance relief from Article 1369 as it relates to signage at 419 High Street; Tax Map 26, Parcel 80; B-4, General Business District.

Fletcher presented the Staff report.

Cardoso recognized Rudy Hoffert of City Neon, Inc., who presented the Board with new drawings referring to the proposed signs. Hoffert explained that *Lotza Mozza* would like to hang a "Carry Out" sign on the side of the building to ensure people from the parking lot and from High Street can see where to pick up orders. Hoffert noted the changes are listed in the Staff Report under conditions.

Hoffert noted signage is requested on the awning and his client would like the public to know what kind of pizza they are advertising. Therefore the words "Wood fired pizza" would be printed on the awning, but would not be needed on the "Carry Out" sign.

Hoffert expanded on the request to explain the signs proposed and how they would be affixed to the building.

Papandreas asked if the signs would be lighted. Hoffert explained that the signs will not be lighted and the PVC material will be pin mount lettering.

Shaffer asked how the proposed signage would affect the upper part of the building. Hoffert stated the upper part of the building will be studio apartments and not require additional commercial signage.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the petition.

There being no comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations.

Papandreas noted the sign on the side of the building is the most important sign proposed and asked if the drawings were to scale. Hoffert confirmed. Papandreas stated the proposed sign should not be reduced as it is important for visibility and marketing for vehicles traveling on the one-way southbound High Street.

Fletcher stated variance relief would be for a total of 46.78 square feet with the changes proposed.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-44 as revised; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Other business establishments in the area and Morgantown have existing signs that are similar in size and style, which provides the type of visibility to the public for which the petitioner seeks to emulate and enjoy. The size of the proposed sign appears to be comparable in size to other businesses in the area which do not appear to adversely impact public health, safety or welfare or property rights within the immediate area. The scale of the proposed master sign plan appears to match the scale of other similar signs within the immediate area and appears to be significantly less than the wall signage for the former *Daniel's Men's Clothing* store that previously occupied the subject space, which does not appear to adversely impact public health, safety or welfare or the rights of adjacent property owners or residents.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The petitioner's building is designed and similar to corner street building with two visible sides but is not on a corner lot but at a parking lot entrance which appears to place the visible signage space at a commercial messaging and customer wayfinding disadvantage given the fact that maximum sign standards are based on storefront width rather than the architectural context of the building as a whole, the conditions of which are not created by the petitioner.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The signs appear to be relatively consistent with other business in the area and other shopping locations throughout Morgantown.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The signs should help to promote business for the tenant and the community within the context and wall sign development pattern within the subject area. Additionally, similar variance relief has been granted for a number of establishments along High Street since 2006.

Papandreas moved to grant the following variance relief for Case No. V15-44:

1. To grant variance relief of 46.78 square feet from the maximum wall sign area standard rather than the petitioner's request of 64.46 square feet; provided, the wall signs identified in the Staff Report as S-2 and S-3 be eliminated.
2. To grant variance relief from Article 1369.07(G)(5) permitting the proposed suspended sign to be erected so that it protrudes into the public right-of-way where a sidewalk has not been developed; provided, said suspended sign must maintain a clearance of ten (10) feet to preserve a nine (9) foot clearance in the event a sidewalk is constructed within said right-of-way below the subject suspended sign.
3. To grant variance relief of three (3) square feet from the maximum area standard for suspended signs; provided, the "WOOD FIRED PIZZA" copy is removed from said suspended sign and replaced with "CARRY OUT" thereby reducing the extent of wall sign variance granted above while preserving a practicable means of communicating the primary programming purpose of the side entrance door.
4. That signs reviewed herein shall conform to the lighting and design standards set forth in Article 1369.08 for the B-4 District, except that:

- a. Variance relief be granted so that the wall sign identified in the Staff Report as S-1 may be constructed of a PVC material provided the face of said wall sign is opaque and no internal illumination may shine through said sign face.
- b. Variance relief be granted so that the copy "Wood Fired Pizza" may be utilized in the wall sign identified in the Staff Report as F-2.
- c. Variance relief be granted so that the copy "Carry Out" may be utilized in the proposed suspended sign as described in Condition No. 3 above.

The motion was seconded by Burton and carried unanimously.

Cardoso reminded Mr. Hoffert that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- C. CU15-05 / South Perk Market / 258 Kingwood Street:** Request by Adam Rosefsky, on behalf of South Perk Market, for conditional use approval of a "Convenience Store, Neighborhood" use at 258 Kingwood Street; Tax Map 29, Parcel 447; R-1A, Single-Family Residential.

Fletcher presented the Staff report.

Cardoso recognized Adam Rosefsky of Morgantown who stated the business plans to sell unique local products to local residents. The window frame identified in the Staff Report is now open and has been replaced with storefront glass, which Rosefsky illustrated with copies of a photograph he shared with the Board.

Cardoso asked for the anticipated store hours. Rosefsky explained the business hours and noted they would be increased if the demand arises. The store would be closed by 7 p.m. daily.

Burton asked if the store would sell beer and wine. Rosefsky stated if there are reasonable permits available for beer and wine then the store would consider selling the products in the future. Liquor would not be sold.

Papandreas noted the business plan has more of a coffee shop or gift shop feel rather than a neighborhood convenience store. Rosefsky stated the business will offer both coffee and food items and will carry standard convenience items such as milk and eggs.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the petition.

Cardoso recognized Matt Russell of Westover who stated that he used to live close to the proposed business and also used to work in the building. Russell stated the petitioner is a great landlord and wished there had been a business like this when he lived in South Park previously. Russell noted this store would be beneficial for Morgantown as one of the best small cities in America.

There being no further comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations.

Fletcher asked if the limited liability company had been formed and registered yet. Rosefsky stated the LLC has not been submitted yet but the LLC will be named "South Perk Market, LLC". Fletcher explained that if approved, Staff will send a letter with a notation directing Staff be informed of the official name of the business organization, which will be the beneficiary of the conditional use approval.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for CU15-05 as revised; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The proposed change in use from a "Florist Shop" use to a "Neighborhood Convenience Store" use does not appear to result in an increase in the intensity of use that requires consideration for the provision of additional on-site parking above that which is currently available as provided in Article 1365.02(B). The subject storefront has been previously occupied by various commercial uses for the past 70 plus years. The existing on-site parking appears to have sufficiently satisfied parking demand for the previous commercial uses.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

All related Building Code and Fire Code provisions will be addressed as required by the Code Enforcement Department and the City Fire Marshal.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The business is not physically changing any buildings to affect surrounding properties. The business will be opening a previously blocked window to increase natural light within the proposed business space. No addition to the existing structure is proposed that would alter existing light distribution and air flow patterns within the general vicinity.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

The business is not making any structural changes to the building or land, therefore no change would result in increasing the mass, density, or intensity of the existing structure.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The historical trend of mixed-uses within the subject structure will continue and therefore not increase existing residential density.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

There is currently existing parking to sufficiently handle anticipated traffic. The business use of the property will not affect any existing infrastructure.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

The business is improving the interior of an existing commercial space and the facility will be returned to its historic (as per the National Registry of Historic Places) use. Occupying the vacant storefront with the proposed "Neighborhood Convenience Store" should serve to reestablish the historical mixed-use activity and vitality that has been enjoyed within the immediate area and Greenmont Neighborhood.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

The National Registry of Historic Places lists the original use of this space as a grocery store. Returning the use to a local convenience store is the most appropriate use of the property to fit into the South Park Historic District.

Papandreas moved to approve CU15-05 as requested with conditions; seconded by Burton. The motion carried unanimously.

NOTE: The following conditions were included in the motion.

1. That to ensure the approved conditional "Neighborhood Convenience Store" use does not detract from the residential character of the neighborhood:
 - a. A limited line of groceries and household items intended for the convenience of the neighborhood must be offered as the establishment's foremost enterprise; and,
 - b. The subject establishment may not be open later than 9:00 PM; and,
 - c. The petitioner must provide, to the satisfaction of the City Engineer, and properly maintain an appropriate public trash receptacle, the area around which the petitioner shall be responsible for keeping free from litter.
2. That the entire window frame on the ground floor facing Kingwood Street, which is further highlighted in the image below, must be filled with window glazing to reestablish the building's commercial storefront; provided, such glazing may not be comprised of a glass block window unit(s).



3. That all regulated signage for the subject establishment must comply with related standards set forth in Article 1369 "Signs".
4. That the beneficiary of the conditional use approval granted herein shall be specific to the business organization to be formed by Mr. Adam Rosefsky and Ms. Sarah Cochran and may not be transferred without the prior approval of the Board of Zoning Appeals.

Cardoso reminded Mr. Rosefsky that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- D. CU15-06 / Messinger / 1216 University Avenue:** Request by Steven Messinger for conditional use approval of an "Incidental Automobile Repair Shop" use at 1216 University Avenue; Tax Map 26A, Parcel 26; B-4, General Business District.

Fletcher presented the Staff Report

Cardoso recognized Steven Messinger of Fairmont, WV who stated the primary business is retail mainly installing car radios. The structure of the building is approximately 3,000 square feet, with half of that designated for retail and the other half for the servicing bay.

Burton asked how many cars are serviced per week. Messinger stated they average between 15 and 25 cars on a weekly basis.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the petition.

There being no comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for CU15-06 as revised; seconded by Herbst. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

On-site parking is provided on the site, which is not required for the use in the B-4 District. Traffic generation associated with the daily operation of the “Incidental Automobile Repair Shop” use is not anticipated to negatively contribute to traffic congestion on surrounding roadways.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

Conformity with relevant Building and Fire Codes will be required as a part of Certificate of Occupancy issuance. Additionally, the Board’s condition prohibiting the handling, processing, or storing of hazardous substances serves to further this objective.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

No physical addition to the existing structure is proposed that would alter current sunlight distribution or airflow trends within the immediate area.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

The proposed “Incidental Automobile Repair Shop” use will occupy an existing commercial tenant space within an established principal structure.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

This retail location is expected to have a low volume of customers. The parking available in the front of the location appears to be adequate to support the volume of customers. The proposed conditional use request does not contain a residential use component.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The proposed “Incidental Automobile Repair Shop” use will be located within an existing commercial tenant space and is not anticipated to require public services beyond that which is currently available within the immediate area.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

The proposed “Incidental Automobile Repair Shop” use appears to be compatible with surrounding uses and will occupy an existing commercial tenant space that includes an existing garage door that can be used to incidental installation services thereby ensuring that the use and related storage remains inside the principal structure.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

There is a similar business within the same area of the proposed location, for which conditional "Incidental Automobile Repair Shop" use approval was granted on 21 MAR 2012 under Case No. CU12-03.

Papandreas moved to approve CU15-06 as requested with conditions; seconded by Burton. The motion carried unanimously.

NOTE: The following conditions were included in the motion.

- 1. That all storage associated with the conditional "Incidental Automobile Repair Shop" use shall be indoors.*
- 2. That all aspects of the conditional "Incidental Automobile Repair Shop" use shall be conducted within the principal structure.*
- 3. That the "Incidental Automobile Repair Shop" use shall not handle, process, or store hazardous substances*
- 4. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.*

Cardoso reminded Mr. Messinger that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

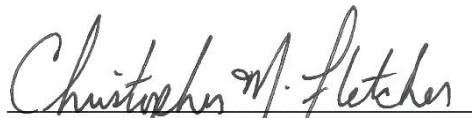
V. ANNOUNCEMENTS: None.

VI. ADJOURNMENT: 7:24 PM

MINUTES APPROVED:

August 19, 2015

BOARD SECRETARY:


Christopher M. Fletcher, AICP